

REFERENCE TITLE: homeowners' associations; open meetings

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HB 2308

Introduced by  
Representative Gray C

## AN ACT

AMENDING SECTIONS 33-1243 AND 33-1813, ARIZONA REVISED STATUTES; REPEALING SECTIONS 33-1248 AND 33-1804, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 33-1248; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 33-1804; RELATING TO HOMEOWNERS' ASSOCIATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1243, Arizona Revised Statutes, is amended to  
3 read:

4 33-1243. Board of directors and officers: conflict: powers:  
5 limitations: removal: annual audit: applicability

6 A. Except as provided in the declaration, the bylaws, subsection B or  
7 other provisions of this chapter, the board of directors may act in all  
8 instances on behalf of the association.

9 B. The board of directors shall not act on behalf of the association  
10 to amend the declaration, terminate the condominium, elect members of the  
11 board of directors or determine the qualifications, powers and duties or  
12 terms of office of board of directors members. The board of directors may  
13 fill vacancies in its membership for the unexpired portion of any term.

14 C. If any contract, decision or other action for compensation taken by  
15 or on behalf of the board of directors would benefit any member of the board  
16 of directors or any person who is a parent, grandparent, spouse, child or  
17 sibling of a member of the board of directors or a parent or spouse of any of  
18 those persons, that member of the board of directors shall declare a conflict  
19 of interest for that issue. The member shall declare the conflict in an open  
20 meeting of the board before the board discusses or takes action on that issue  
21 and that member may then vote on that issue. Any contract entered into in  
22 violation of this subsection is void and unenforceable.

23 D. Except as provided in the declaration, within thirty days after  
24 adoption of any proposed budget for the condominium, the board of directors  
25 shall provide a summary of the budget to all the unit owners. Unless the  
26 board of directors is expressly authorized in the declaration to adopt and  
27 amend budgets from time to time, any budget or amendment shall be ratified by  
28 the unit owners in accordance with the procedures set forth in this  
29 subsection. If ratification is required, the board of directors shall set a  
30 date for a meeting of the unit owners to consider ratification of the budget  
31 not fewer than fourteen nor more than thirty days after mailing of the  
32 summary. Unless at that meeting a majority of all the unit owners or any  
33 larger vote specified in the declaration rejects the budget, the budget is  
34 ratified, whether or not a quorum is present. If the proposed budget is  
35 rejected, the periodic budget last ratified by the unit owners shall be  
36 continued until such time as the unit owners ratify a subsequent budget  
37 proposed by the board of directors.

38 E. The declaration may provide for a period of declarant control of  
39 the association, during which period a declarant or persons designated by the  
40 declarant may appoint and remove the officers and members of the board of  
41 directors. Regardless of the period provided in the declaration, a period of  
42 declarant control terminates no later than the earlier of:

1           1. Ninety days after conveyance of seventy-five per cent of the units  
2 which may be created to unit owners other than a declarant.

3           2. Four years after all declarants have ceased to offer units for sale  
4 in the ordinary course of business.

5           F. A declarant may voluntarily surrender the right to appoint and  
6 remove officers and members of the board of directors before termination of  
7 the period prescribed in subsection E, but in that event the declarant may  
8 require, for the duration of the period of declarant control, that specified  
9 actions of the association or board of directors, as described in a recorded  
10 instrument executed by the declarant, be approved by the declarant before  
11 they become effective.

12           G. Not later than the termination of any period of declarant control  
13 the unit owners shall elect a board of directors of at least three members,  
14 at least a majority of whom must be unit owners. The board of directors  
15 shall elect the officers. The board members and officers shall take office  
16 upon election.

17           H. Notwithstanding any provision of the declaration or bylaws to the  
18 contrary, the unit owners, by a majority vote of members entitled to vote and  
19 voting on the matter at a meeting of the members called pursuant to this  
20 section at which a quorum is present, may remove any member of the board of  
21 directors with or without cause, other than a member appointed by the  
22 declarant. For purposes of calling for removal of a member of the board of  
23 directors, other than a member appointed by the declarant, the following  
24 apply:

25           1. In an association with one thousand or fewer members, on receipt of  
26 a petition that calls for removal of a member of the board of directors and  
27 that is signed by the number of persons who are entitled to cast at least  
28 twenty-five per cent of the votes in the association or one hundred votes in  
29 the association, whichever is less, the board shall call and provide written  
30 notice of a special meeting of the association as prescribed by section  
31 33-1248, ~~subsection B~~.

32           2. Notwithstanding section 33-1248, ~~subsection B~~, in an association  
33 with more than one thousand members, on receipt of a petition that calls for  
34 removal of a member of the board of directors and that is signed by the  
35 number of persons who are entitled to cast at least ten per cent of the votes  
36 in the association or one thousand votes in the association, whichever is  
37 less, the board shall call and provide written notice of a special meeting of  
38 the association. The board shall provide written notice of a special meeting  
39 as prescribed by section 33-1248, ~~subsection B~~.

40           3. The special meeting shall be called, noticed and held within thirty  
41 days after receipt of the petition.

1           4. For purposes of a special meeting called pursuant to this  
2 subsection, a quorum is present if the number of owners to whom at least  
3 twenty per cent of the votes or one thousand votes, whichever is less, are  
4 allocated is present at the meeting in person or as otherwise permitted by  
5 law.

6           5. If a civil action is filed regarding the removal of a board member,  
7 the prevailing party in the civil action shall be awarded its reasonable  
8 attorney fees and costs.

9           6. The board of directors shall retain all documents and other records  
10 relating to the proposed removal of the member of the board of directors for  
11 at least one year after the date of the special meeting and shall permit  
12 members to inspect those documents and records pursuant to section 33-1258.

13           7. A petition that calls for the removal of the same member of the  
14 board of directors shall not be submitted more than once during each term of  
15 office for that member.

16           I. For an association in which board members are elected from  
17 separately designated voting districts, a member of the board of directors,  
18 other than a member appointed by the declarant, may be removed only by a vote  
19 of the members from that voting district, and only the members from that  
20 voting district are eligible to vote on the matter or be counted for purposes  
21 of determining a quorum.

22           J. Unless any provision in the condominium documents requires an  
23 annual audit by a certified public accountant, the board of directors shall  
24 provide for an annual financial audit, review or compilation of the  
25 association. The audit, review or compilation shall be completed no later  
26 than one hundred eighty days after the end of the association's fiscal year  
27 and shall be made available upon request to the unit owners within thirty  
28 days after its completion.

29           K. This section does not apply to timeshare plans or associations, or  
30 the period of declarant control under timeshare instruments, that are subject  
31 to chapter 20 of this title.

32           Sec. 2. Repeal

33           Section 33-1248, Arizona Revised Statutes, is repealed.

34           Sec. 3. Title 33, chapter 9, article 3, Arizona Revised Statutes, is  
35 amended by adding a new section 33-1248, to read:

36           33-1248. Open meetings

37           NOTWITHSTANDING ANY PROVISIONS IN THE CONDOMINIUM DOCUMENTS OR THE LACK  
38 OF ANY PROVISIONS IN THOSE DOCUMENTS, AN ASSOCIATION IS DEEMED A PUBLIC BODY  
39 FOR THE PURPOSES OF SECTIONS 38-431.01, 38-431.02, 38-431.03 AND 38-431.05  
40 AND THOSE PROVISIONS OF THE OPEN MEETINGS LAWS SHALL APPLY.

41           Sec. 4. Repeal

42           Section 33-1804, Arizona Revised Statutes, is repealed.

1       Sec. 5. Title 33, chapter 16, article 1, Arizona Revised Statutes, is  
2 amended by adding a new section 33-1804, to read:

3       33-1804. Open meetings

4       NOTWITHSTANDING ANY PROVISIONS IN THE COMMUNITY DOCUMENTS OR THE LACK  
5 OF ANY PROVISIONS IN THOSE DOCUMENTS, AN ASSOCIATION IS DEEMED A PUBLIC BODY  
6 FOR THE PURPOSES OF SECTIONS 38-431.01, 38-431.02, 38-431.03 AND 38-431.05  
7 AND THOSE PROVISIONS OF THE OPEN MEETINGS LAWS SHALL APPLY.

8       Sec. 6. Section 33-1813, Arizona Revised Statutes, is amended to read:

9       33-1813. Removal of board member; special meeting

10       A. Notwithstanding any provision of the declaration or bylaws to the  
11 contrary, the members, by a majority vote of members entitled to vote and  
12 voting on the matter at a meeting of the members called pursuant to this  
13 section at which a quorum is present, may remove any member of the board of  
14 directors with or without cause, other than a member appointed by the  
15 declarant. For purposes of calling for removal of a member of the board of  
16 directors, other than a member appointed by the declarant, the following  
17 apply:

18       1. In an association with one thousand or fewer members, on receipt of  
19 a petition that calls for removal of a member of the board of directors and  
20 that is signed by the number of persons who are entitled to cast at least  
21 twenty-five per cent of the votes in the association or one hundred votes in  
22 the association, whichever is less, the board shall call and provide written  
23 notice of a special meeting of the association as prescribed by section  
24 33-1804, ~~subsection B.~~

25       2. Notwithstanding section 33-1804, ~~subsection B,~~ in an association  
26 with more than one thousand members, on receipt of a petition that calls for  
27 removal of a member of the board of directors and that is signed by the  
28 number of persons who are entitled to cast at least ten per cent of the votes  
29 in the association or one thousand votes in the association, whichever is  
30 less, the board shall call and provide written notice of a special meeting of  
31 the association. The board shall provide written notice of a special meeting  
32 as prescribed by section 33-1804, ~~subsection B.~~

33       3. The special meeting shall be called, noticed and held within thirty  
34 days after receipt of the petition.

35       4. For purposes of a special meeting called pursuant to this  
36 subsection, a quorum is present if the number of owners to whom at least  
37 twenty per cent of the votes or one thousand votes, whichever is less, are  
38 allocated is present at the meeting in person or as otherwise permitted by  
39 law.

40       5. If a civil action is filed regarding the removal of a board member,  
41 the prevailing party in the civil action shall be awarded its reasonable  
42 attorney fees and costs.

43       6. The board of directors shall retain all documents and other records  
44 relating to the proposed removal of the member of the board of directors for

1 at least one year after the date of the special meeting and shall permit  
2 members to inspect those documents and records pursuant to section 33-1805.

3 7. A petition that calls for the removal of the same member of the  
4 board of directors shall not be submitted more than once during each term of  
5 office for that member.

6 B. For an association in which board members are elected from  
7 separately designated voting districts, a member of the board of directors,  
8 other than a member appointed by the declarant, may be removed only by a vote  
9 of the members from that voting district, and only the members from that  
10 voting district are eligible to vote on the matter or be counted for purposes  
11 of determining a quorum.